



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2012-0276]

RIN 1625-AA08

Special Local Regulations for Marine Events; Potomac River,  
National Harbor Access Channel, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing special local regulations during the swim segment of the "Swim Across the Potomac River" swimming competition, to be held on the waters of the Potomac River on July 8, 2012. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Potomac River and National Harbor Access Channel during the event.

DATES: This rule is effective on July 8, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0276]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on

the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Ronald Houck, Sector Baltimore Waterways Management Division, U.S. Coast Guard; telephone 410-576-2674, e-mail Ronald.L.Houck@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

#### A. Regulatory History and Information

On April 27, 2012, we published a notice of proposed rulemaking (NPRM) entitled "Special Local Regulations for Marine Events; Potomac River, National Harbor Access Channel, MD" in the Federal Register (77 FR 82). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. The potential dangers

posed by persons and vessels operating in close proximity to swimmers crossing navigation channels make special local regulations necessary. Delaying the effective date would be contrary to the public interest because it would require rescheduling the event, which hundreds of people are involved in. The regulation is necessary to ensure the safety of the event participants, patrol vessels, support craft and other vessels transiting the event area.

#### B. Basis and Purpose

On July 8, 2012, the National Harbor Marina of Oxon Hill, Maryland, will sponsor a swimming competition across the Potomac River between Alexandria, Virginia and Oxon Hill, Maryland. The event consists of up to 250 swimmers on a 1.3-mile linear course located downriver from the Woodrow Wilson Memorial (I-495/I-95) Bridge. The swimmers will be supported by sponsor-provided watercraft. The start will be located at North Point in Jones Point Park and the finish will be located along the shore at National Harbor Marina. Portions of the swim course will cross the Potomac River federal navigation channel and the National Harbor Access Channel. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

#### C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received no comments in response to the

NPRM. No public meeting was requested and none was held.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation will prevent traffic from transiting portions of the Potomac River and National Harbor Access Channel during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners and marine information broadcasts, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit safely through a portion of the regulated area, but only

after the last participant has cleared that portion of the regulated area and when the Coast Guard Patrol Commander deems it safe to do so.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Potomac River, including and National Harbor Access Channel, during the event.

Although this regulation prevents traffic from transiting portions of the Potomac River and the National Harbor Access Channel during the event, this rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Though the regulated area extends across the entire width of the river, vessel traffic may be permitted to safely transit a portion of the regulated area, but only after all participants have safely cleared that portion of the regulated area and when the Coast Guard Patrol Commander deems it

safe for vessel traffic to do so. All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz). Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.



## 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

## 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR Part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical

Exclusion Determination are available in the docket where indicated under ADDRESSES.

E. List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a temporary section, § 100.35-T05-0276 to read as follows:

§ 100.35T05-0276 Special Local Regulations for Marine Events; Potomac River, National Harbor Access Channel, MD.

(a) Regulated area. The following location is a regulated area: All waters of the Potomac River, within lines connecting the following positions: from 38°47'35" N, longitude 077°02'22" W, thence to latitude 38°47'12" N, longitude 077°00'57" W, and from latitude 38°47'24" N, longitude 077°03'03" W to latitude 38°46'54" N, longitude 077°01'09" W. All coordinates reference Datum NAD 1983.

(b) Definitions. (1) Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the U. S. Coast Guard

who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) Special local regulations. (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons in the regulated area. When hailed or signaled by an official patrol vessel, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) Persons desiring to transit the regulated area must first obtain authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz). All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz).

(3) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event date and times.

(d) Enforcement period. This section will be enforced from  
7 a.m. until 11 a.m. on July 8, 2012.

Dated: JUN 13 2012

Mark P. O'Malley  
Captain, U.S. Coast Guard  
Captain of the Port Baltimore.

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